An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

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| **Decision Ref:** | 2020-0119 |
| **Sector:** | Insurance |
| **Product / Service:** | Travel |
| **Conduct(s) complained of:** | Rejection of claim - cancellation<br>Rejection of claim - pre-existing condition |
| **Outcome:** | Rejected |

## LEGALLY BINDING DECISION
## OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint concerns a decision by the Provider to decline a claim made by the Complainants on a travel insurance policy.

## The Complainants' Case

The Complainants booked a family holiday on **14 April 2018**, with a scheduled departure date of **23 April 2018**. The Complainants incepted a travel insurance policy with the Provider on **16 April 2018**, paying to the Provider a premium of €84.12.

The Complainants outlined in their Complaint Form submitted to this Office that *"just prior to* [the Complainants] *taking out the policy* [the second Complainant's] *mother went to her GP with a minor complaint of shortness of breath"*. This visit to the GP occurred on **13 April 2018**. In a letter dated **17 May 2018**, a consultant cardiologist stated that *"*[the second Complainant's mother] *presented to her practitioner on the 13th April. She had a two week history of shortness of breath. She was referred to me and I saw her for the first time on the 16th April* [2018]*."*

The second Complainant's mother underwent serious surgery on **19 April 2018**. The Complainants informed the Provider's agent that they had cancelled their holiday on **20 April 2018**. Thereafter, the Complainants submitted a claim to the Provider for the cost of the cancelled holiday in the sum of €6,798 being accommodation, flights and ground transport.

In a letter dated **9 May 2018**, the Provider rejected the Complainant's claim on the basis that *"*[the Complainants] *policy was purchased on the 16/04/2018 which means no event already in existence prior to this date is covered. The symptoms which eventually led to the cancellation of your trip were already in existence when you purchased your policy"*.

The Complainants requested that their claim be reviewed in line with the Provider's internal appeals procedure. In a letter dated **11 June 2018**, the Provider explained its position further and referred to the travel insurance policy's definition of *"medical condition"* as meaning *"any disease, illness, injury or symptom"*. The Provider outlined that should the Complainants remain dissatisfied with the response, *"*[the Provider] *will register this dissatisfaction as a complaint and have your claim reviewed per our internal protocols"*.

The Complainants assert that the severity of the medical condition of the second Complainant's mother was not known at the time the holiday was booked or the travel insurance policy was incepted and the Provider has therefore wrongfully repudiated their claim. The Complainants state that their *"argument is that prior to us purchasing the policy it was not known by anyone… that she had symptoms that would lead to a diagnosis requiring [details redacted] surgery. Her shortness of breath could have been related to a number of less serious causes such as anxiety or asthma"*. The second Complainant stated that on **18 April 2018**, the *"actual seriousness at this point was still an unknown with no diagnosis* [of her mother's medical condition]*"*. The first Complainant feels that *"on top of the stress and worry we have gone through with* [the second Complainant's] *mother's illness,* [the Provider's rejection of the claim] *has added even more stress"*.

The Complainants submitted a letter from the cardiologist dated **17 May 2018** which states that the second Complainant's mother did *"not have any pre-existing condition"*.

Ultimately, the Complainants want the Provider to reimburse the cost of the cancelled holiday, in the sum of €6,798.00.

**<u>The Provider's Case</u>**

The Provider has set outs its response to the Complainants' complaint in its final response letter dated **29 June 2018** as well as in its submissions to this Office in response to this complaint.

The Provider stated in its final response letter dated **29 June 2018**, that the decision to decline the claim was correct as the second Complainant's mother was *"already undergoing investigation of the symptoms that led to the diagnosis and illness that eventually resulted in your trip cancellation."* The Provider goes on to state that *"whilst the cardiologist asserts in his letter, there was no "pre-existing" condition by his standards, our contract of insurance considers* [the second Complainant's mother] *to have an undiagnosed condition (e.g. an unquantifiable risk) from the date of onset of the symptoms and certainly the date of her subsequent visit to her General Practitioner on **13 April 2018**. This is why* [the Provider] *must deny liability on this occasion."*

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The Provider includes the relevant clauses of its insurance policy in support of its claim:

> *"Page 4*
>
> *Exclusions that apply if a close relative or travelling companion has medical conditions.*
>
> *If any of the below exclusions apply to your close relative(s) or travel companion(s) at the time of taking out this policy or at the time of booking the trip, you will not be covered under Section A – Cancellation or Curtailment Charges…for any claims arising directly or indirectly from:*
>
> > *iii) Any medical condition for which a close relative or a travelling companion are aware of but for which they have not had a diagnosis.*
>
> *Page 3*
>
> *Medical Condition*
>
> - *Means any disease, illness, injury or symptom.*

The Provider submits that the above clauses demonstrate the policy intent to define a known or existing "symptom" as a "medical condition" for the purposes of this insurance policy.

The Provider deems the point at which the second Complainant's mother presented to her GP with a 2-week history of "shortness of breath" on the **13 April 2018** as the point at which she was on the route to being fully diagnosed, as at this point she was awaiting further investigation and a diagnosis. The Provider states that this occurred one day prior to the booking of the trip and three days prior to the policy purchase.

In essence, the Provider sates that the second Complainant's mother was already undergoing investigation of the symptoms that led to the diagnosis and illness that eventually resulted in the trip cancellation by the Complainants, both prior to the booking of the trip and prior to the purchase of the policy. The Provider states that the insurance policy cannot provide cover for the circumstance of an undiagnosed medical condition of a close relative and in fact that this eventuality is specifically excluded from cover.

**The Complaint for Adjudication**

The complaint is that the Provider wrongfully rejected the Complainants' travel insurance claim for the cost of their cancelled holiday.

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**Decision**

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainants were given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on 7 February 2020, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

In the absence of additional submissions from the parties, within the period permitted, I set out below my final determination.

I note that page 4 of the travel insurance policy states exclusions that apply if a close relative or travelling companion has medical conditions:

> *"If any of the below exclusions apply to your close relative(s) or travel companion(s) at the time of taking out this policy or at the time of booking the trip, you will not be covered under Section A – Cancellation or Curtailment Charges…for any claims arising directly or indirectly from:"*
>
> > *iii) Any medical condition for which a close relative or a travelling companion are aware of but for which they have not had a diagnosis.*

I further note that page 3 of travel insurance policy states that a medical condition is defined as *"any disease, illness, injury or symptom."*

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Furthermore, page 5 of the travel insurance policy states that there is a general exclusion for *"any circumstances you are aware of at the time of taking out of this policy that could reasonably be expected to give rise to a claim on this policy."* and page 7 of the policy (Section A- Cancellation or Curtailment Charges) states that claims are not covered where there are *"circumstances known to you prior to the date this insurance is effected by you or the time of booking any trip which could reasonably have been expected to give rise to cancellation or curtailment of the Trip"*.

Having carefully considered all of the evidence before me, while I accept the Complainants' submission that they were unaware of the severity of the medical difficulties suffered by the second Complainant's mother at the time of taking out the policy, I am of the view that the investigations carried out on the second Complainant's mother by her GP on **13 April 2018** as well as the GP's referral of the second Complainant's mother to a cardiologist should have been disclosed to the Provider for its consideration when medical information was sought during the application process.

While the events surrounding the Complainants' claim are most unfortunate, I accept that the second Complainant's mother was suffering from *"shortness of breath"* one day prior to the booking of the trip and three days prior to the policy purchase and this should have been declared to the Provider. As of **13 April 2018**, the Complainants would also have been aware that the second Complainant's mother was being referred to a cardiologist for further assessment and therefore, were aware that the *"shortness of breath"* was being investigated as a potential indicator for a more serious medical problem.

Based on the foregoing, I accept that the heart condition of the second Complainant's mother was therefore a medical condition for which a close relative or a travelling companion of the Complainants is aware of but for which no diagnosis has been received. The Provider was therefore entitled to conclude that this constituted circumstances which the Complainants were aware and could reasonably be expected to give rise to cancellation of the trip and an associated claim on the policy. Consequently, I accept any claim arising directly or indirectly from this set of circumstances is not covered under the terms of the Provider's policy.

Accordingly, while I understand the upset and frustration which the Complainants feel, I must accept that the Provider was not obliged to grant the Complainants' claim under their travel insurance policy and accordingly I do not uphold this complaint.

**Conclusion**

My Decision pursuant to ***Section 60(1)*** of the ***Financial Services and Pensions Ombudsman Act 2017***, is that this complaint is rejected.

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**The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.**

**GER DEERING**
**FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

3 March 2020

**Pursuant to *Section 62* of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will publish legally binding decisions in relation to complaints concerning financial service providers in such a manner that—**

**(a) ensures that—**

**(i) a complainant shall not be identified by name, address or otherwise,**

**(ii) a provider shall not be identified by name or address, and**

**(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.**